

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	8:13 CR 105
Plaintiff,)	
)	
-vs-)	MOTION FOR LEAVE TO
)	WITHDRAW
TIMOTHY DEFOGGI,)	
)	
Defendant.)	
)	

COMES NOW James Martin Davis pursuant to NE Gen R 1.3(f), and moves the court for leave to withdraw as counsel for the defendant because I am obligated by Rule 1-1.16 of the Nebraska Rules of Professional Conduct to do so.

This Rule provides that a lawyer shall withdraw from representing a client when the client insists on taking repugnant actions or with which the lawyer has a fundamental disagreement, [Rule 1-1.16(4)], and when the representation has been rendered unreasonably difficult by the client, as well as for other good cause, [Rule 1-1.6(6)].

This is demonstrated in the following particulars by the client's conduct, to wit:

1. His attempting to file motions with the court without my knowledge or consent, and later against my instructions not to do so;
2. His sending correspondence and attempting to communicate directly with the court without my knowledge or consent;
3. His making material misrepresentations to me upon which I relied to the detriment of the client and myself ;
4. Preventing me from filing substantive and procedural pretrial motions on his behalf that I believe are both professionally and practically necessary;

5. Rather than allowing me to file a motion to appoint an expert, he has instructed me to petition the court to allow him to be his own forensic computer expert because, " he is one of the top U.S. intelligence analysts in the country"; (see attachment "A")
6. Demanding that I petition the court so that he can provide the court with an ex parte in camera classified briefing for reasons of national security; (see attachment "A")
7. Instructing me to pursue irrelevant, unnecessary and counterproductive matters, courses of actions or investigations that have nothing to do with his defense;
8. Arguing with me about what the elements of the charges are despite what the jury instructions are or how the indictment reads;
9. Rendering our conferences and conversations meaningless by talking about his professional experience and his personal and political opinions and beliefs that have nothing to do my preparation of his defense;
10. Insisting on going to trial immediately, without regard to counsel's advice that it is premature to do so until counsel is sufficiently prepared to present the defendant's case;
11. Creating a situation and scenario where , regardless of the outcome in this case, counsel will be attacked by the defendant in post conviction proceedings; (see attachment "A")
12. Because of all of this, there is now an irreparable breakdown of communication between the attorney and the client which has rendered my continued representation of the defendant professionally impossible;
13. AN AFFIDAVIT IN SUPPORT OF THIS MOTION WILL BE OFFERED AT THE HEARING RATHER THAN BEING FILED WITH THIS MOTION.

WHEREFORE James Martin Davis respectfully moves the court for leave to withdraw pursuant to his obligation do so under Rule 1-1.16 of the Nebraska Rules of Professional Conduct.

s/JAMES MARTIN DAVIS#10927
Davis Law Office
1623 Farnam Street, Suite 500
Omaha, NE 68102
Tel: (402) 341-9900
Fax: (402) 341-8144
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2014, I electronically filed the foregoing with the Clerk of District Court using the CM/ECF system, which will send notification of such filing to the following:

Michael Norris
Assistant United States Attorney
1620 Dodge Street, Suite 1400
Omaha, NE 68102

Notice sent via United States Postal Service to:

Saunders County Corrections
ATTN: Timothy R. Defoggi, #11078
387 N. Chestnut, Suite 4
Wahoo, NE 68066

S/JAMES MARTIN DAVIS